private business corporation. It must be conceded that the real purpose of all business corporations is the making of money. This is shown by the fact that all the text-writers admit and all the cases hold that when the corporation is about to fail or become insolvent that the majority of the stockholders can sell all the corporate assets in order to make the loss as small as possible.[13] The reason on which this rule is based is that such authority was supposed to be contemplated and agreed to by all the shareholders since this is the action that sound business judgment would dictate. But "if the majority may sell to prevent greater losses, why may they not also sell to make greater gains? Bearing in mind that this is a purely business proposition, with no public rights or duties involved, there seems to be no substantial difference between the cases, as a matter of principle. In each case, the sale is made because it is of advantage to the stockholders." [14] And if an advantageous sale was made, the corporate purpose of making money would be furthered and not defeated by the act of the majority. An analogous holding is that the minority cannot compel the business to be carried on against the will of the majority.[15] And as said by Mr. Thompson in his book on Corporations,[16] "It is believed that no case can be found in which a court of equity has granted an injunction, at the suit of a minority stockholder against the majority, to prevent them from discontinuing the business of the corporation and winding up its affairs."

Thus, although there is an irreconcilable conflict of authority upon this question, it would seem on reason and principle that the majority should be allowed to make such a sale. No case has been found where the arguments advanced above have been considered and the court denied the right of the majority to act in this manner. "The question is one of future prospects [concerning the corporation]. Its decision requires the exercise of business judgment, sagacity, and power to forecast coming events. It is not an issue appropriate for trial and decision in courts, but rather one to be settled by the judgment of the men conducting the business in question. In a limited sense, the majority act as trustees for all the shareholders." [17] R. Y. B.

LANDLORD'S LIABILITY TO TENANT ON AN AGREEMENT TO KEEP SAFE THE LEASED PREMISES.—It has been long and well

[13] CLARK, CORPORATIONS, 3rd. ed., § 168; Tanner *v.* Lindell R. Co., 180 Mo. 1, 79 S. W. 155, 103 Am. St. Rep. 534, and note; Beidenkopf *v.* Des Moines Life Ins. Co., 160 Iowa 629, 142 N. W. 434, 46 L. R. A. (N. S.) 290; Phillips *v.* Providence Steam Engine Co., 21 R. I. 302, 43 Atl. 598, 45 L. R. A. 560.

[14] Bowditch *v.* Jackson, *supra.*

[15] Treadwell *v.* Salisbury Co., *supra.*

[16] 4 THOMPSON, CORPORATIONS, § 4443.

[17] Bowditch *v.* Jackson, *supra.*

settled that at common law a landlord is under no duty to repair premises actually demised under the lease so that the landlord retains no possession or control over them.[1] It follows from this that if the tenant is injured by an accident due to the condition of the premises, he has no right to recover damages for these personal injuries.[2] And as a general thing the courts have held that no difference is made in this rule by the landlord's covenanting or contracting to repair the premises.[3] For, in such a case, if there be a breach of the covenant by the landlord so that the tenant is injured thereby and the tenant sue the landlord on the contract, the measure of damages is the difference between the value of the tenement in repair and the tenement out of repair. Any damages for personal injuries are too remote and not such as were in the contemplation of the parties in making the contract. Again, if the suit be brought in tort, a demurrer will lie, for there is no tort where the law imposes no duty and we have just seen that the landlord is not bound to repair.[4] This reasoning may seem to be based on a technicality rather than justice, but let it be remembered that damages are expensive for the landlord and that a tenant does not have to go on risking life or limb until he is hurt. He can treat the lease as broken on the landlord's failure to repair and move out; he can make the repairs himself and deduct them from the rent, or sue the landlord for their cost. Why, then, should a landlord be charged thousands of dollars and costs because his tenant chooses to stay on day after day and risk his life on a rickety back porch? The more dangerous the porch, the more idiotic and stupid the tenant is for continuing to run the risk of it. In many cases the portion of the premises causing the injuries is one that the tenant could have avoided with little or no inconvenience. Viewed from this standpoint, there is as much justice on the side of the landlord as on the side of the tenant.

Digests and other sources abound in cases supposedly holding contrary to the general rule, but if these be investigated, about ninety per cent of them will be found to be cases where the injury was due to the condition of some part of the premises kept in the control of the landlord for the common use of several tenants. Stairways and elevators in apartment houses are fre-

[1] Reams *v.* Taylor, 31 Utah 288, 87 Pac. 1089, 120 Am. St. Rep. 930, 11 Ann. Cas. 51, 8 L. R. A. (N. S.) 436; Glenn *v.* Hill, 210 Mo. 291, 109 S. W. 27; Phelan *v.* Fitzpatrick, 188 Mass. 237, 74 N. E. 326, 108 Am. St. Rep. 469; Miller *v.* Rinaldo, 47 N. Y. Supp. 636.

[2] See note 1.

[3] Tutle *v.* Gilbert Manufacturing Co., 145 Mass. 169, 13 N. E. 465; Frank *v.* Mandel, 78 N. Y. Supp. 855; Kushes *v.* Ginsburg, 91 N. Y. Supp. 216; Pinkerton *v.* Slocumb, 126 Md. 665, 95 Atl. 965; Burdick *v.* Cheadle, 26 Ohio St. 393, 20 Am. Rep. 767; Davis *v.* Smith, 26 R. I. 129, 58 Atl. 630, 3 Ann. Cas. 832, and note; Anderson *v.* Robinson, 182 Ala. 615, 62 So. 512, 47 L. R. A. (N. S.) 699, Ann. Cas. 1915D 829, and note; Murrell *v.* Crawford (Kan.), 169 Pac. 561.

[4] See note 3.

quent causes of such actions. It has never been doubted that a tenant can recover in these cases, nor that a landlord is obliged to use reasonable care in maintaining the safety of portions of the premises not demised to the tenant, but retained and allowed to be used by the occupants of an apartment house as a common thoroughfare.[5] These cases are perfectly sound, but they are not in point.

After distinguishing this group of cases, there are very few left holding the landlord liable and those few can be successfully criticised. *Schoppel* v. *Daly*[6] was a case of misfeasance on the part of the landlord who undertook to make repairs and made them negligently. It is therefore to be distinguished. *Lowe* v. *O'Brien*[7] followed, without any discussion, the case of *Mesher* v. *Osborne*[8] in allowing the tenant to recover. The case so followed was decided on the ground that the landlord *let* the premises with a dangerous thing thereon and did nothing to make it safe. If this case is against any settled doctrine of law it is that a landlord in letting premises does not warrant their safety or their habitable condition. Another case in this group is *Sontag* v. *O'Hare*.[9] It is meat for the destructive critic. The question which the court deliberated was one of evidence; the authorities cited fail to sustain the court's conclusion and it would certainly seem that the porch that caused the injury was a porch used in common by all of the tenants, but that is neither stated nor denied.

As regards the very recent cases, *Hart* v. *Coleman*[10] was a case involving negligence in making repairs and does not properly belong in this category. Then, too, the court held that in making the contract, damages from personal injuries were in this case contemplated. This decision was made four to three and the court expressly stated that the doctrine of this case was to be limited to the precise facts therein. *Pollack* v. *Perry*[11] was recently decided in Texas on the authority of *Hart* v. *Coleman* and this later case was distinctly one of misfeasance in performing the contract, while this discussion is about nonfeasance in failing to perform.

With the cases holding almost unanimously that a tenant cannot recover damages for personal injuries due to a failure of the landlord to repair according to his contract, the Supreme Court of Massachusetts, in the recent case of *Crowe* v. *Bixby*,[12] gave judgment for the tenant. The facts in that case are that the

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[5] Schwandt *v.* Oil Co., 93 Ill. App. 365; Perry *v.* Levy, 87 N. J. L. 670, 94 Atl. 569; Looney *v.* McLean, 129 Mass. 33; Wilcox *v.* Zane, 167 Mass. 302; Nash *v.* Webber, 204 Mass. 419, 90 N. E. 822; Fitzsimmons *v.* Hale, 20 Mass. 461, 107 N. E. 929; Shea *v.* McElvoy, 220 Mass. 239, 107 N. E. 945; Crudo *v.* Milton, 233 Mass. 229, 124 N. E. 30.

[6] 112 La. 201, 36 So. 322.

[7] 77 Wash. 677, 138 Pac. 295.

[8] 75 Wash. 439, 134 Pac. 1092.

[9] 73 Ill. App. 432.

[10] (Ala.), 78 So. 201.

[11] (Tex.), 217 S. W. 967.

[12] (Mass.), 129 N. E. 433.

plaintiff leased a tenement with a back porch from the defendant under an agreement by which the defendant promised "to keep the place in repair and safe to live in." From time to time, the defendant landlord made repairs without waiting for plaintiff to notify or request him to make them. Just before this action, the back porch fell into a dangerous condition, and collapsed under the weight of the tenant, killing her. She had never notified the landlord of the condition of the porch or asked him to repair it. This action for damages was brought by the administrator of the tenant under a statute giving an action for death by wrongful act, and as before stated, the court allowed a recovery.

The ground of the decision in this case was a distinction made between a promise on the part of the landlord "to repair" and one "to keep the premises safe". The court said that if the contract be of the latter sort (as it was held to be in this case), damages for personal injuries may be recovered. The earlier cases did not note any such distinction, although several of them were brought on contracts "to keep safe".[13] It is true that in two of them the tenant got damages, but the ground of the decision in the first case[14] was that the landlord was doing a thing dangerous to life in allowing a cistern to remain uncovered. No distinction was noted. This case has been much criticised. The recovery in the other case was due to the failure of the court to distinguish between the landlord's liability to a tenant and his liability to a third person.[15] Wood on Landlord and Tenant was cited and formed the basis for the decision. That passage from Wood deals with the liability of a landlord to a third person.

The first case to be actually determined on this distinction was *Miles* v. *Janvrin*. *Miles* v. *Janvrin,* 200 Mass. 514,[16] is on all fours with *Miles* v. *Janvrin,* 196 Mass. 431,[17] and that is based on nothing. The point therein discussed was not material, as the decision was based on other grounds. The second case followed the *dictum* in the first case. No authorities for the distinction are cited. The reasoning is unsatisfactory.

The next case[18] on this point was one in which the court refused to infer an agreement "to keep safe", but could not resist the temptation to lay down the law on the subject, by way of *dictum,* and this law conformed to *Miles* v. *Janvrin.* Based on this *dictum* and following it without any reasoning or question-

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[13] Ploen *v.* Staff, 91 Mo. App. 309; Thompson *v.* Clemens, 96 Md. 196, 53 Atl. 517, 60 L. R. A. 580; Moore *v.* Steljes, 69 Fed. 518; Stillwell *v.* Louisville Land Co., 22 Ky. Law. Rep. 785, 58 S. W. 696; 52 L. R. A. 325.

[14] Stillwell *v.* Louisville Land Co., *supra.*

[15] Moore *v.* Steljes, *supra.* [16] 86 N.E. 785.

[17] 82 N. E. 708, 13 L. R. A. (N. S.) 379.

[18] Fiorntino *v.* Mason, 233 Mass. 283, 124 N. E. 283.

ing, the court decided the case of *Crowe* v. *Bixby*,[19] which case is the basis of this discussion. Every other case cited in *Crowe* v. *Bixby* held the landlord liable; every one involved a common stairway or an elevator retained in the control of the landlord; every one was out of point.[20] Nowhere did the court see the distinction between premises in the control of the landlord and those in the control of the tenant, while occupied with making a distinction which hardly exists elsewhere.

In Missouri,[21] it was recognized in a case in which the point was not involved, but when the question did arise on two subsequent occasions the court failed to apply this distinction.[22]

An Illinois case has cited *Miles* v. *Janvrin,* and recognized the exception of the covenant to keep safe, but in that case there was no such covenant.[23]

The trend of the law seems to be to find some way to hold the landlord liable, but as yet no well reasoned case has found a way to this end. The Massachusetts cases are not the sort to lure other courts from settled principles of law, for none of them attempts to reason or to review authorities. They simply cut the Gordian Knot and decide in favor of the tenant.

B. C.

BUILDING LINES UNDER THE POLICE POWER.—Recent legislation in many States in regard to zones, building restrictions and building lines has made more important the proper interpretation to be given to such statutes. A building line is a restriction under the authority of a statute or ordinance whereby an owner of property fronting on a street is prohibited from building on a certain portion of that property adjacent to the street.[1] The usual type of statute granting the power to establish building lines provides for compensation to the land owner, and classifies the restriction under the power of eminent domain,[2] and this is the interpretation customarily given. More recently, however, statutes have been enacted with similar provisions, but making no mention as to the right of the property owner to compensation.[3] It is to this class of statutes that this note is directed.

The authorities are practically uniform in declaring that the

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[19] *Supra.*

[20] The cases cited were: Looney *v.* McLean, *supra;* Wilcox *v.* Zane, *supra;* Nash *v.* Webber, *supra;* Shea *v.* McElvoy, *supra;* Crudo *v.* Milton, *supra;* Miles *v.* Janvrin, *supra;* Fiorntino *v.* Mason, *supra.*

[21] Dailey *v.* Vogl, 187 Mo. App. 261, 173 S. W. 707.

[22] Murphy *v.* Dee, 190 Mo. App. 261, 175 S. W. 287; McBride *v.* Gurney (Mo.), 185 S. W. 735.

[23] Cromwell *v.* Allen, 151 Ill. App. 404.

[1] City of St. Louis *v.* Hill, 116 Mo. 527, 22 S. W. 861, 21 L. R. A. 226.

[2] State *v.* Houghton (Minn.), 176 N. W. 159.

[3] Town of Windsor *v.* Whitney (Conn.), 111 Atl. 354; City of St. Louis *v.* Hill, *supra;* Eubank *v.* City of Richmond, 226 U. S. 137.